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13 *Attorneys for Plaintiff*

14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF MONTANA
16 MISSOULA DIVISION

17 ALLIANCE FOR THE WILD
18 ROCKIES,

19 Plaintiff,

20 v.

21 ENVIRONMENTAL
22 PROTECTION AGENCY,
23 Defendant.

CV 17-64-DLC

STIPULATION OF DISMISSAL

24 The Parties Stipulate as follows:

- 25 1. Plaintiff Alliance for the Wild Rockies (“Alliance”) filed suit on May 16, 2017
26 alleging Defendant Environmental Protection Agency’s (“EPA”) violation of
the Endangered Species Act Section 7(a)(2) by failing to reinitiate consultation
regarding the effects of the remedial operations of the Silver Bow Creek/Butte

1 Area Superfund Site (“SBCBA”) on designated bull trout critical habitat. Doc 1
2 at 2.

3
4 2. In its Complaint, Alliance requested this Court to order Defendant to reinitiate
5 and complete consultation on the remedial operations of the SBCBA. Doc 1 at
6 7.

7
8 3. EPA maintains that it has been in and continues to be in compliance with all
9 applicable federal environmental laws at the SBCBA and that this Court does
10 not have jurisdiction to review this case.

11
12 4. On August 30, 2017, the Court granted a stay in this case to allow EPA to
13 focus on the ongoing Section 7 consultation. Doc 14

14
15 5. On December 8, 2017 EPA filed an unopposed motion to extend the stay to
16 allow EPA to complete its biological assessment for the ongoing remedial
17 actions at the Silver Bow Creek/Butte Area Superfund Site as part of its
18 Section 7 consultation with the U.S. Fish & Wildlife Service under the
19 Endangered Species Act. Doc 15.

20
21 6. On December 11, 2017, the Court extended the stay in this case until February
22 19, 2018 to allow EPA to continue working on the ongoing Section 7
23 consultation. Doc 16.

24
25 7. EPA maintains that it did not waive any argument or defense by entering into
26 that stay.

1 8. On January 31, 2018, EPA transmitted its biological assessment for the current
2 remedial activities at the SBCBA to the U.S. Fish and Wildlife Service.

3
4 9. Alliance maintains that EPA has provided the relief Alliance requested in its
5 Complaint.

6 10. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the Parties
7 stipulate to a dismissal with prejudice of all claims in Alliance's May 16, 2017
8 Complaint.
9

10 11. Alliance reserves its right to file for attorneys' fees and costs pursuant to 16
11 U.S.C. §1540(g)(4); *Ass'n of Cal. Water Agencies v. Evans*, 386 F.3d 879 (9th
12 Cir. 2004); and L.R. 54. EPA reserves its rights to oppose Alliance's request.
13

14
15 /s/ Kristine M. Akland

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19 Attorneys for Plaintiff
20 JEFFREY R. WOOD,
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21 SETH M. BARSKY, Chief
22 MEREDITH L. FLAX, Assistant Chief

23 /s/ Rickey D. Turner, Jr.

24 Trial Attorney
25 U.S. Department of Justice
Environment & Natural Resources Division
26 Wildlife & Marine Resources Section

Attorneys for Defendants

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v.

ENVIRONMENTAL
PROTECTION AGENCY,
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ORDER

Pursuant to the Parties' Stipulation of Dismissal, this case is dismissed with
prejudice.

ORDERED this ____ day of _____ 2018.

Dana L. Christiansen, Chief Judge
United States District Court